HCJ & CVRJ

WRIT APPEAL NOS.1542 AND 1546 OF 2003

ORAL ORDER:

(per The Hon'ble The Chief Justice Sri Devinder Gupta)

Grievance in the appeals by the appellants is that writ petitions were dismissed only on the basis of the stand of respondents which was conveyed to the Court only without making appellants aware of the same. After writ petition was filed, learned counsel for the respondents was asked to have instructions and the instructions were received by the learned counsel and were passed on to the Court and the entire order is based upon them. Learned counsel for the appellants has taken a stand that the version of the respondents is factually incorrect and no opportunity was afforded to the appellants to meet those allegations and thus there is violation of principles of natural justice.

We have heard learned counsel for the parties and we are of the view that every petition filed in Court under Article 226 of Constitution of India is liable to be decided on the basis of affidavits. Appellants had filed writ petitions on affidavit. In case respondents had opposed the same it was but necessary for the respondents to have brought their version on record by filing affidavit. Thereafter alone on hearing the parties the learned single Judge ought to have disposed of the matter. Of course, this does not debar learned single Judge from even dismissing the writ petition on the basis of averments made in the petition when he finds that there is no prima facie case. But when prima facie case is found and he felt desirable that respondents must also disclose their version, proper affidavit should have been filed by the respondents. It was not done in this case. Consequently, appeal is allowed. Impugned order is set aside with direction that writ petitions be heard and decided after respondents' version comes on record and of course after hearing the parties. Writ petitions be now posted for admission before learned single Judge.

Learned counsel for the respondents states that counter will be filed within two weeks. The same be filed before the learned single Judge with advance copy to the learned counsel for the appellants who may, if so desire, file reply within one week thereafter. Parties to appear before the learned single Judge on 20-10-2003.

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DEVINDER GUPTA, CJ

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C.V.RAMULU, J

16th September, 2003.

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